

EXHIBIT B



COURT REPORTING

LEGAL VIDEOGRAPHY

VIDEOCONFERENCING

TRIAL PRESENTATION

MOCK JURY SERVICES

LEGAL TRANSCRIPTION

COPYING AND SCANNING

LANGUAGE INTERPRETERS



DEPOSITION AND TRIAL



(800) 528-3335

NAEGELIUSA.COM

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TESLA, INC.,

Plaintiff,

vs.

No. 3:18-CV-00296-LRH-CBC

MARTIN TRIPP,

Defendant.

CONFIDENTIAL

DEPOSITION OF

NICHOLAS RYAN GICINTO

**TAKEN ON
TUESDAY, AUGUST 27, 2019
9:58 A.M.**

**HOME2SUITES CONFERENCE CENTER
2001 MAIN STREET
KANSAS CITY, MISSOURI 64108**

1 **CONFIDENTIAL**

2 **DEPOSITION OF**

3 **NICHOLAS RYAN GICINTO**

4 **TAKEN ON**

5 **TUESDAAY, AUGUST 27, 2019**

6 **9:58 A.M.**

7
8 **THE VIDEOGRAPHER:** We are on the record.

9 The time is 9:58 a.m. and the date is August the 27,
10 2019. This is the deposition of Nick Gicinto. The
11 case caption is Tesla, Incorporated vs. Martin
12 Tripp, United States District Court of Nevada. Would
13 counsel please introduce yourself and state whom you
14 represent.

15 **MR. FISCHBACH:** Good morning. William
16 Fischbach on behalf of the defendant and counter-
17 claimant, Mark Tripp.

18 **MR. UMHOFFER:** Good morning. Matthew
19 Donald Umhofer on behalf of the deponent and Risk
20 IQ.

21 **MR. GATES:** Sean Gates on behalf of Tesla.

22 **THE VIDEOGRAPHER:** If the court reporter
23 will please swear in the witness.

24 **NICHOLAS RYAN GICINTO**, being first duly sworn,
25 testified under oath as follows:

1 **EXAMINATION**

2 **BY MR. FISCHBACH:**

3 **Q. Good morning, sir. Could we have your**
4 **full name for the record.**

5 **A. Nicholas Ryan Gicinto.**

6 **Q. And sir, have you been deposed before?**

7 **A. Yes.**

8 **Q. I'm going to tell you a couple things you**
9 **probably know but they're good to get on the record**
10 **early on.**

11 **A. Okay.**

12 **Q. You strike me as an intelligent and**
13 **educated guy, so you're probably going to anticipate**
14 **a lot of my questions and where they're going.**
15 **Please let me finish the question. It helps the**
16 **court reporter get a good, clean record.**

17 **A. Okay.**

18 **Q. Let's do our best not to talk over each**
19 **other, because again, it makes it much harder on the**
20 **court reporter if she has to transcribe two people**
21 **talking.**

22 **A. I understand.**

23 **Q. And then please know if you have an**
24 **affirmative response or a negative response please**
25 **give me a yes or a no or something along those**

1 data on a chart in a Tableau --

2 A. Tableau chart.

3 Q. -- Tableau chart right down to the decimal
4 point.

5 A. Yeah.

6 Q. Is that data something that Mr. Tripp had
7 authority to access as part of his normal job?

8 A. Well, it's interesting because data from
9 the MOS, from the manufacturing and operating system
10 is available to a number of production associates
11 who are asked to run charts, who are asked to do
12 different, you know, calculations, right, to produce
13 metrics for their team so they can track progress.

14 Did he have access? Yes.

15 Was he authorized to use it in the way he
16 did? No.

17 Q. And I appreciate you making that
18 distinction because you're right, there's kind of
19 two components of that, there's did he have
20 authority to access the information and did he have
21 authority to give it to Linette Lopez. I want to
22 focus on the first question, which is, did Mr. Tripp
23 as part of his ordinary job duties have authority to
24 access the information in that Tableau?

25 A. As far as I know he, because he was able

1 to access it, he had authority based on the
2 permissioning systems.

3 Q. I'm going to read a statement to you.

4 A. Okay.

5 Q. Tell me if it's true or false.

6 A. Okay.

7 Q. To conduct his job responsibilities Tripp
8 was provided the ability to query and access
9 confidential part, quality, and process data from
10 Tesla's manufacturing operating system or MOS; true
11 statement?

12 A. May I read it? Is that possible? I'm
13 more visual so forgive me. I'll preserve the fold.

14 May I ask where this came from?

15 Q. You can ask.

16 A. I mean, if it's part of a broader
17 statement or if there's context around it, it would
18 be helpful, more helpful for me to answer the
19 question.

20 Q. Generally speaking it's from a document
21 that Tesla prepared.

22 A. Okay.

23 Q. Other than that I would probably get into
24 something that Mr. Gates might object to, but
25 suffice to say these are words prepared by Tesla.

1 A. Okay. May I ask who in Tesla prepared
2 them?

3 MR. GATES: I don't know.

4 BY MR. FISCHBACH:

5 Q. Probably Mr. Gates or the associate
6 working for him.

7 A. Okay.

8 MR. UMHOFFER: No pressure.

9 A. I -- I believe that is a true statement.

10 BY MR. FISCHBACH:

11 Q. Okay. Fair enough.

12 A. I'm not trying to overly complicate it but
13 seeing a snippet out of a document when you don't
14 have the broader context of something bigger is
15 difficult at times.

16 Q. I'll read you another statement.

17 A. Okay.

18 Q. In fact, I'll read it to you and then I'll
19 show it to you.

20 A. Get ready. Thanks.

21 Q. Tripp wrote structured query language SQL
22 scripts to obtain data from the entire Gigafactory
23 running these queries from different computers using
24 generic user names and downloading the data to a
25 personal USB drive. I'm going to show you the

1 statement so you can read it.

2 A. Thank you.

3 MR. GATES: In the meantime, I'll

4 interject a foundation objection.

5 THE WITNESS: Okay.

6 A. So based on what I recall from the
7 investigation I wouldn't say that that is false.

8 BY MR. FISCHBACH:

9 Q. Would you say it's true?

10 A. It appears to be an accurate statement.

11 Q. We talked earlier about -- I don't like
12 putting words in your mouth, but I'm going to put
13 words in your mouth. I believe you testified that
14 the fact that Tripp was able to access the data he
15 did was indicative of his authority to at least
16 access that data, correct?

17 A. Based on the permissioning systems, if he
18 had access it was because he was given the authority
19 to access it, yes, assuming it was permissioned
20 correctly.

21 Q. All right. You obviously take issue with
22 how he used the data, but in terms of access he had
23 authority to access the information?

24 A. Correct. And as I -- as I recall, some of
25 that access had been limited based on some

1 questions. They don't typically answer them.

2 (Deposition Exhibit 6 was marked for
3 identification.)

4 BY MR. FISCHBACH:

5 Q. Sir, the court reporter has handed you
6 what has been marked as Deposition Exhibit 6. It's
7 a tweet from Elon Musk dated July 5th of 2018. It
8 says, indeed very simple question. To be specific,
9 @LopezLinette, did you compensate or promise to
10 compensate Martin Tripp for inside information about
11 Tesla, did he under that inducement provide you with
12 exaggerated, negative info which you printed but
13 turned out to be untrue?

14 Did your investigation uncover evidence of
15 Linette Lopez compensated or promised to compensate
16 Martin Tripp for inside information about Tesla?

17 A. Through the course of our investigation we
18 -- we saw indicators that suggested Mr. Tripp had a
19 possible premeditated or preplanned or had
20 preplanned the scenario to which he was going to
21 provide information to Lopez. We saw indications
22 that he was attempting to sell materials online,
23 stating that he needed to sell, for example, a
24 guitar because he was moving overseas soon. We saw
25 -- we had information that he had attempted to sell

1 a firearm to an employee just a few days or weeks
2 prior to providing the information to Ms. Lopez and
3 he also communicated to several employees that he
4 had an early retirement plan which didn't seem to be
5 consistent with his -- with his tenure at the
6 Gigafactory at that point in time, and his -- and so
7 the timing of him providing this information seemed
8 to be very strange, so those factors presented a
9 theory that perhaps he had been compensated for this
10 information given the fact that he had a plan to --
11 potential plan to move overseas and that he had --
12 he had some -- engineered some plan for a very early
13 retirement within the next year or so, I believe.
14 Ultimately there was nothing that we uncovered
15 showing a connection to any compensation between him
16 and Ms. Lopez, but there were strange indicators
17 showing some premeditation of his plan.

18 Q. And obviously sitting here today you can't
19 tell me what Elon Musk was thinking when he wrote
20 this tweet in Exhibit 6?

21 A. No idea.

22 Q. Likewise, you can't tell me what Elon Musk
23 was thinking when he wrote the emails in Exhibit 5,
24 correct?

25 A. Correct.

1 wrote software that hacked Tesla's MOS they're just
2 referring to three queries about a half page like
3 this?

4 A. Four queries, there were four things he
5 was looking for, bandoliers, modules and stators and
6 inverters, so there's four, again that we know about
7 based on -- based on this evidence.

8 Q. So again when Tesla alleges Mr. Tripp
9 wrote software that hacked Tesla's MOS, all it
10 really boiled down to was four of these half-page
11 queries to obtain information that Mr. Tripp had
12 authority to access; is that correct, sir?

13 A. When you say all it really boils down to,
14 I think that, like diminishes the technical
15 expertise that's required. I mean, you say this is
16 half a page. It's half a page on an 11 by, what,
17 17. That if you were -- I mean, four of those,
18 that's actually two pages' worth of queries that
19 somebody would need training and expertise to write.

20 Q. Did you understand my question?

21 A. I understand your question and you're
22 oversimplifying the question is what I'm explaining,
23 you are boiling it down to, boy, wasn't this easy to
24 do, and Tesla seems to be making a big deal out of
25 this. And what I'm saying is this query isn't as

1 simple as your question is making it out to be, so
2 I'm taking issue with the question is what I'm
3 saying. If you would like to rephrase it, I would
4 be happy to answer it.

5 Q. I don't know that I should rephrase it,
6 but I will say again, sir --

7 A. It's your time.

8 Q. -- Tesla alleges that Mr. Tripp wrote
9 software that hacked Tesla's MOS, all that means is
10 Mr. Tripp wrote four queries just like one on
11 Deposition Exhibit 16?

12 A. What --

13 MR. UMHOFFER: Objection, lacks foundation.
14 Asked and answered. Go ahead.

15 MR. GATES: Argumentative.

16 A. What it means is he wrote four queries
17 like this at least that we know of that obtained
18 information that while he may have had the access
19 technically he was not authorized to obtain for this
20 purpose.

21 BY MR. FISCHBACH:

22 Q. True or false: Mr. Tripp authored hacking
23 software and placed it into the computer systems of
24 three other individuals at the company so that
25 confidential Tesla data could be persistently

1 charges 395 now.

2 **Q. And I'm sure you're worth it, sir.**

3 **MR. FISCHBACH:** Thank you very much for
4 your time today. I don't have any further.

5 **MR. GATES:** No further questions.

6 **THE VIDEOGRAPHER:** Please stand by. We do
7 need to take transcript and video orders on record.

8 **MR. FISCHBACH:** Oh, I've got to go first?
9 We'll do electronic with exhibits, please. Full size
10 and mini.

11 **MR. GATES:** I need electronic transcripts
12 in text format and the video with sync.

13 **MR. FISCHBACH:** Yeah, me too.

14 **MR. UMHOFFER:** We want an opportunity for
15 him to review the transcript for accuracy.

16 **THE VIDEOGRAPHER:** The time is 3:21 p.m.
17 and we are going off the record.

18 **(Deposition concluded at 3:21 p.m.)**
19
20
21
22
23
24
25